

# **TOWN OF NANTUCKET BOARD OF HEALTH TOBACCO CONTROL REGULATIONS**

## **LOCAL REGULATION 72.00**

The 1986 Surgeon General's Report on "Health Consequences of Involuntary Smoking" clearly documents that non-smokers are placed at risk for developing disease as a result of exposure to environmental tobacco smoke, or secondhand smoke. In 1993, the Environmental Protection Agency classified environmental tobacco smoke as a known carcinogen. Numerous studies have found that tobacco smoke is a major contributor to indoor air pollution, and that breathing secondhand smoke is a cause of disease, including lung cancer, in nonsmokers.

Exposure to environmental tobacco smoke presents a serious and substantial public health risk. Of particular concern is the workplace environment of nonsmokers, where they may be subjected to sustained, involuntary exposure. At special risk are children, the elderly, individuals with cardiovascular disease, and individuals with impaired respiratory function, including asthmatics and those with obstructive airway disease.

Studies have shown that vending machines afford an opportunity for unauthorized sale of cigarettes to minors. Evidence further demonstrates that tobacco is extremely addictive. Approximately 80% of all smokers begin smoking before age eighteen and more than 3,000 young people begin smoking every day in this nation.

### **72.01 AUTHORITY.**

- A. The town of Nantucket, pursuant to Massachusetts General Laws, Chapter 111, Section 31, adopts these regulations as reasonable health regulations designed to protect and improve the health of its residents.

### **72.02 DEFINITIONS.**

- A. Bar or Lounge – An establishment with or without a food service license, devoted primarily to serving alcoholic beverages for consumption by guests on the premises, in which the consumption of food is incidental only to the consumption of such beverages.

- B. Employee - A person who performs services for wages or other considerations.**
- C. Employer - A person, partnership, association, corporation, company or other organized group, including the County / Town of Nantucket and any department or agency thereof, and any municipal entity, which utilizes the services of two (2) or more employees.**
- D. Food Service Establishment – An establishment having one or more seats at which food is served to the public that is a covered area/or located within a permanent structure.**
- E. Function Room/Hall – A separate , enclosed room used for private Functions within a food service establishment.**
- F. Minor - A person under eighteen (18) years of age.**
- G. Public Place - An enclosed, indoor area that is open to and used by the general public, including and not limited to the following facilities; licensed child care facilities; educational facilities; clinics; nursing homes; all elevators, stairwells, halls, lobbies and entranceways accessible to the public; bars or lounges; common areas (not including actual sleeping quarters) of guest houses, bed & breakfasts, inns, hotels and motels; food service establishments; public restrooms; laundromats; hair salons, barbershops; libraries; municipal buildings; museums; retail food establishments; indoor sports arenas; enclosed shopping malls; theaters; auditoriums; public transit facilities; and, any function rooms / halls when used for public meetings or public social functions. A function room / hall used for a private social function, in which the sponsor of the private function not the owner or proprietor has control over the seating arrangements, shall not be construed as a public place.**
- H. Smoking - The lighting of, or having in ones possession any lighted cigarette, cigar, or pipe.**
- I. Tobacco - Cigarettes, cigars, snuff, chewing tobacco or tobacco in any of its forms.**
- J. Tobacco vending machines - A mechanical or electrical device which dispenses tobacco products by self service, with or without the assistance of a clerk or operator.**

- K. **Ventilation System** - A mechanical or electrical device or system capable of removing contaminated air from an enclosed space at a rate of 60 cubic feet per minute.
- L. **Workplace** - Any area within a structure or portion thereof in which two (2) or more employees perform services for their employer. It also includes employee lounges, restrooms, dining areas, conference rooms, hallways, stairways, and entranceways.

#### **72.03 PROHIBITION OF SMOKING IN PUBLIC PLACES.**

- A. Smoking shall be prohibited in all public places (as defined in Section 72.02 G) as of March 1st, 1997.

#### **72.04 PROHIBITION OF SMOKING IN FOOD SERVICE ESTABLISHMENTS, LOUNGES AND BARS.**

- A. Smoking shall be prohibited in all food service establishments, and bars or lounges as defined in Section 72.02 Definitions, as of January 2, 2000.

#### **72.05 WORKPLACE.**

- A. It shall be unlawful for any person to smoke in any workplace except in specifically designated smoking areas as described in section 72.04 B.
  - B. Each employer may specifically designate enclosed areas in which employees may smoke, provided, however that comparable nonsmoking areas of adequate size and capacity are available, and provided further, that physical barriers and separate ventilation systems, vented directly to the outside, are used to segregate smoking areas from nonsmoking areas.
  - C. Smoking areas shall be such that smoke is not able to migrate into nonsmoking areas. Common areas, including hallways, elevators, entranceways, stairwells, restrooms, and waiting areas listed in 72.02 D may not be designated as smoking areas. Areas designated as smoking and nonsmoking must be conspicuously marked.

- D. Plans of the design of the ventilation system and the maintenance Schedule for the designated smoking area must be approved by the Nantucket Board of Health. Said ventilation system shall provide a minimum ventilation rate of 60 cubic feet per minute. Annual inspection by a qualified HVAC Contractor or otherwise qualified professional approved by the Nantucket Board of Health shall be required to assure satisfactory compliance with ventilation requirements. This annual report must be submitted to the Nantucket Health Department in writing prior to the issuance or renewal of any permit or license.
- D. Each person having control of premises upon which smoking is prohibited by this regulation shall not knowingly permit a violation of this regulation.

#### **72.06 POSTING.**

- A. Every person having control of a premises where smoking is prohibited by this regulation, shall conspicuously displayed on the premises, including the primary entrance doorways signs reading "Smoking prohibited by law". Posting of the international symbol for "no smoking" ( consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it) shall be deemed as compliance.

#### **72.07 VARIANCE PROCEEDURES**

- A. Variance for Bar or Lounge: The owner of a bar or lounge may apply to the Board of Health for the variance of the prohibition of smoking in each bar or lounge. Application shall be made in writing to the Board of Health, stating the reasons and justification for the request. The Board of Health shall conduct a public hearing on the request, at Which time the owner or operator shall present the request and the basis for the request. The Board of Health may grant the requested Variance, provided the bar or lounge is equipped with a ventilation system as defined herein.

## **72.08 SALES AND DISTRUBUTION OF TOBACCO PRODUCTS.**

- A. PERMIT - To monitor compliance of the sale of tobacco products, permits will be issued. No person, firm, corporation, establishment or agency, shall sell tobacco products within the Town of Nantucket without a valid Tobacco Sales Permit issued by the Board of Health. Permits must be posted in a manner conspicuous to the public. Tobacco Sales Permits must be renewed annually at a time and fee set forth by the Board of Health.**
- B. Sales to Minors - In conformance with Massachusetts General Laws Chapter 270, Section 6, no person, firm, corporation, establishment, or agency, shall sell tobacco products to a minor. Each employee working in an establishment licensed to sell tobacco products shall be required to read the Board of Health Regulations and State Laws regarding the sale of tobacco, and sign a form indicating that such regulations / laws have been read and understood, a copy of which must be placed on file in the office of the employer and retained. Such signed forms must be made available for inspection, during the license holder's normal business hours upon request of the agent of the Board of Health.**
- C. Distribution of Tobacco Products - No person, firm, corporation, establishment, or agency shall distribute tobacco products free of charge or in connection with a commercial or promotional endeavor within the Town of Nantucket. Such endeavors include, but are not limited to, product "giveaways" or distribution of a tobacco product as an incentive, prize, award, or bonus in a game, contest, or tournament involving skill or chance. Such restrictions shall not apply to use of coupons from magazines, newspapers, periodicals or attached to packaging. All distributors / retailers of tobacco products or tobacco merchandise must require that the customer present a valid state issued picture identification card or drivers license with appropriate photograph to confirm that the customer is of a legal age to purchase the tobacco products.**
- D. Restrictions on Self-service (freestanding) Tobacco Displays - It has been shown that self-service (freestanding) tobacco displays encourage illegal activity by youth and provide youth with easier**

access to tobacco products. Therefore, tobacco products on freestanding displays in retail locations, where a tobacco product may be selected by the customer, shall be restricted in the following manner:

1. self-service (freestanding) displays shall be permitted only on a checkout counter / register, in full view of a clerk and at a distance of no more than five (5) feet from the clerk.
2. no floor displays shall be permitted.
3. If a checkout counter / register is not staffed, the tobacco products must be in an enclosed, locked case or otherwise inaccessible for self service.

#### **72.09 VIOLATIONS AND PENALTIES.**

- A. Violations of this smoking regulation will be subject to the provisions of the Regulations of the Town of Nantucket regarding non-criminal disposition.
- B. Any person who knowingly violates any provision of this Regulation, or who smokes in a municipal area subject to Regulation, in which a "Smoking Prohibited by Law" sign or its equivalent is conspicuously displayed, shall be punished by a fine of up to \$50.00 dollars for each offense.
- C. Any proprietors(s) or other person(s) in charge of a public place or workplace, including municipal entities, who fail(s) to comply with these regulations shall be subject to the following actions for each offense:
  1. a warning shall be issued for a first offense. A fine of up to \$100.00 dollars may be issued for a second offense, up to \$200.00 dollars for a third offense, up to \$300.00 dollars for a fourth offense, and up to \$300.00 for any subsequent offense; and
  2. Following the second offense the Board of Health may, after a public hearing, suspend any license for that public place for a period of up to two days for each day of non-compliance, or withhold renewal of license . Following a third offense, the Board of Health may suspend an existing permit / license for a period of time determined by the Board of Health until compliance is achieved.

- D. Persons, firms, corporations, or agencies selling tobacco products to minors or selling tobacco products without a Tobacco Sales Permit shall be punished by a fine of not more than \$300.00 per day for each day of such violation and/or suspension of the Tobacco Sales Permit.
- E. In addition to the remedies provided by 72.07 B, 72.07 C, and 72.07 D above, the Board of Health or any person aggrieved by the failure of the proprietor or other person in charge of a public place or workplace to comply with any provision of this subsection may apply for injunctive relief to enforce the provisions of this subsection in any court of competent jurisdiction.

#### **72.10 SEVEREABILITY.**

- A. If any provision of these regulations is declared invalid or unenforceable, the other provisions shall not be affected thereby but shall continue in full force and effect.

#### **72.11 OTHER APPLICABLE LAWS.**

- A. The Board of Health or its enforcement officer(s) shall enforce this Regulation. Any violation of these regulations may be enforced and punished by the provisions of the Code of Nantucket Administrative Legislation, General Provisions, Section 1.1 et seq. Non criminal disposition.
- B. Any citizen who desires to register a complaint of non-compliance under this regulation may do so by contacting the Health Department.

#### **72.12 EFFECTIVE DATE.**

**These regulations shall be effective as of April 1, 1999.**

**As Amended March 31, 1999**